

**IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

SECURITIES INVESTORS PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

MJK CLEARING, INC.,

Debtor.

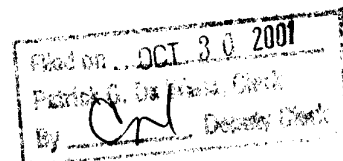
) Chapter 11  
)  
)  
) Case No. CV01-1779 RHK/JJM  
)  
) Bankr. Adv. Proc. No. 01-4257 RJK  
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)  
) [Honorable Robert J. Kressel]  
)  
)

**RESPONSE TO MOTION FOR PUBLICATION OF NOTICES,  
PROCEDURES FOR RESOLUTION OF CLAIMS, AND OTHER RELIEF**

Investment Centers of America, Inc. ("ICA,"), by and through its undersigned attorneys, hereby submits this response (the "Response") to the Notice of Hearing and Motion for Approval of Publication of Notices, Procedures for Resolution of Claims, and Other Relief (the "Motion") of James P. Stephenson (the "Trustee"), as Trustee for the liquidation of the business of MJK Clearing, Inc. ("MJK" or the "Debtor"). In support of this Response, ICA submits as follows:

1. ICA is a broker-dealer, not affiliated with MJK. More than 37,000 of ICA's customers cleared trades through MJK, which is more customers than any other non-affiliated broker-dealer whom used MJK to clear trades.

2. On September 27, 2001, the Honorable Richard Kyle, Judge of the United States District Court for the District of Minnesota, entered an Order granting the application of the Securities Investors Protection Corporation ("SIPC") for issuance of a Protective Decree



37-1

finding the customers of MJK, to be in need of the protection afforded by the Securities Investor Protection Act of 1970 (“SIPA”) and commenced this Chapter 7 bankruptcy case for MJK.

3. On October 2, 2001, the Bankruptcy Court for the District of Minnesota, entered an order approving the agreement between the Trustee, SWS Securities, Inc. (“SWS”) and SIPC, dated as of September 30, 2001 (the “Transfer Agreement”), which approved the transfer of the MJK customer accounts held by the Trustee to SWS. Pursuant to the order, 90% of the stated amount of assets in each of MJK’s customer accounts were transferred to SWS and made available to customers. In addition, SIPA provided protection of the 10% deficiency amount for each customer account in the form of a transfer of assets of up to \$500,000 per customer.

4. Due to the customer account asset transfers in connection with the SWS transaction and the protections afforded by SIPA, the vast majority of MJK’s customers have had their accounts fully restored. Only a relatively small number of customers still have an account deficiency. The Trustee acknowledges this, reciting in its Motion that, “SIPC is anticipat[ing] that there will only be a small number of customers (less than 500 customers out of 212,000 total customers) who will actually need to either file a customer claim form or correspond with the Trustee for any reason.” (Motion at ¶11.) Similarly, only a small number of ICA’s 37,000 customers have a remaining deficiency in their customer accounts after taking into account the 90% asset transfer and the SIPC protection.

5. By this response, ICA opposes the Trustee’s version of the Notice as set forth in Exhibit A of its Motion. Although the Trustee acknowledges that only about 500 customers still have account deficiencies for which they need to assert claims against the MJK

estate, the form of notice proposed to be sent would create extreme confusion among more than 200,000 customers as to whether or not they should, or should not, file claims in this bankruptcy case in order to continue to access the account already provided them through the SWS transaction and from SIPC. Any Notice sent by the Trustee to customers must be crystal clear as to who needs to file a proof of claim. In particular, the Notice should specify that customers need not file claims on behalf of securities or other account assets which have clearly been made available to them in their accounts –i.e. that the more than 200,000 MJK customers, whose accounts have been fully restored should be informed that they, need not file a claim for assets that have already been delivered to them.

6. ICA suggests that the Notice as set forth in Exhibit A include language that reads as follows (or similar language):

**PLEASE TAKE FURTHER NOTICE:** If you were a customer of MJK Clearing, Inc., you do not need to file this claim to retain assets that have already been restored to your customer accounts.

7. In addition, to the extent that customers have questions respecting the Notice and the claim forms, the Notice should inform customers whom they should contact to address these questions. The Notice presently proposed by the Trustee in Exhibit fails to identify a contact person representing the Trustee if customers have concerns or questions respecting their claims. Identification of that person, and provision of a corresponding post office and e-mail address and a phone number, is entirely appropriate and necessary to address any confusion among customers and avoid burdensome calls and communications to ICA and other introducing brokers with respect to the Notice and filing of customer claims.

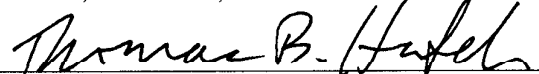
WHEREFORE, for the reasons stated herein, ICA respectfully requests that this Court enter an order denying the relief requested in the Motion with respect to the material identified in Exhibit A thereto, ordering the relief requested herein, and grant such other and further relief as the Court may deem appropriate.

Dated: October 30, 2001

SIDLEY AUSTIN BROWN & WOOD  
Bryan Krakauer  
Bank One Plaza  
10 South Dearborn Street  
Chicago, Illinois 60603  
(312) 853-7000

-and-

ROBINS, KAPLAN, MILLER & CJRESI L.L.P.

  
\_\_\_\_\_  
Thomas B. Hatch  
2800 Lasalle Plaza  
800 Lasalle Avenue  
Minneapolis, Minnesota 55402-2015  
(612) 349-8500

**CERTIFICATE OF SERVICE**

I, Mary Ann Schumacher, do hereby certify that a copy of the foregoing:

1. Response to Motion for Publication of Notices, Procedures for Resolution of Claims, and Other Relief.

have been served on the parties set forth below on this 30th day of October, 2001, by messenger:

MJK Clearing, Inc.  
Miller, Johnson, Steichen, Kinnard, Inc.  
c/o Todd Miller, Esq.  
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Minneapolis, MN 55416

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Faegre & Benson  
90 South 7<sup>th</sup> Street, Suite 2200  
Minneapolis, MN 55402-3901

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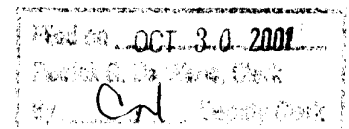
Maple Securities USA Inc.  
c/o James K. Langdon, III, Esq.  
Dorsey & Whitney LLP  
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Minneapolis, MN 55402

Wells Fargo Bank, N.A.  
c/o Mark J. Kalla, Esq.  
Bruce A. Kenzie, Esq.  
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Stephen M. Mertz, Esq.  
Faegre & Benson  
90 South 7<sup>th</sup> Street, Suite 2200  
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SWS Securities Corp.  
c/o William R. Skallerud, Esq.  
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Ferris, Baker Watts, Inc.  
Terrence M. Fruth, Esq.  
Thomas E. Jamison, Esq.  
Fruth, Jamison & Elsass, P.A.  
4705 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402



And that a copy of the foregoing:

1. Response to Motion for Publication of Notices, Procedures for Resolution of Claims, and Other Relief.

has been served on the parties set forth below on this 30<sup>th</sup> day of October, 2001, by depositing a copy thereof in the United States Mail, postage prepaid:

SIPC  
c/o Stephen P. Harbeck, Esq.  
805 15<sup>th</sup> Street NW, Suite 800  
Washington, D.C. 20005

John R. Lee, Esq.  
Sonia U. Chae, Esq.  
Securities and Exchange Commission  
Midwest Regional Office  
500 West Madison Street, Suite 1400  
Chicago, IL 60661

Securities Investor Protection Corporation  
c/o Ken Caputo, Esq.  
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Teri M. Swanson, Esq.  
Securities and Exchange Commission  
450 Fifth Street NW (Mail Stop 6-6)  
Washington, D.C. 20549-0606

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<p>Bullish Bob Bagley Securities Bob Bagley 2535A Cedar Springs Dallas, TX 75201</p>	<p>Citizens State Bank of Gaylord 320 Main Avenue P. O. Box 266 Gaylord, MN 55344</p>
<p>CB Richard Ellis Rena M. Ward Assistant Real Estate Manager 5500 Wayzata Boulevard, Suite 125 Minneapolis, MN 55416</p>	<p>Clayton, Lowell &amp; Conger Leigh Garber 1872 Ballina Road Cazenovia, NY 13035</p>
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<p>CK Cooper &amp; Company Shawn Crawford 18300 Von Karman Avenue, Suite 440 Irvine, CA 92612</p>	<p>Mark C. McCullough The Colonade 5500 Wayzata Boulevard, Suite 730 Minneapolis, MN 55416</p>
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<p>Stifel, Nicolaus Ronald J. Kruszewski One Financial Plaza 501 North Broadway St. Louis, MO 63102</p>	<p>Stockgift.com TERM Gino Hellizer 2117 Observatory Place NW, Suite 2-B Washington, D.C. 20007</p>
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Mary Ann Schumacher



ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

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THOMAS B. HATCH  
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October 30, 2001

**Via Messenger**

Clerk, U.S. Bankruptcy Court  
301 U. S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

Re: Securities Investors Protection Corporation v. MJK Clearing, Inc.  
Case No. CV 01-1779 RHK/JJM  
Bankr. Adv. Proc. No. 01-4257 RJK  
Our File No. 122247-0000

Dear Sir/Madam:

Enclosed for filing in the above matter is Investment Centers of America's Response to Motion for Publication of Notices, Procedures for Resolution of Claims, and Other Relief along with an Certificate of Service.

By copy of this letter, we are serving all counsel of record.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.



Thomas B. Hatch

TBH/ms  
Enclosures

c: All Counsel of Record (w/encs.)